

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**FRED SMITH**

**PLANTIFF**

**v.**

**No. 3:15-cv-00092-MPM-JMV**

**WELLS FARGO HOME MORTGAGE**

**DEFENDANT**

**ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER**

This matter comes before the court on the motion by Fred Smith for the court to reconsider its order granting Wells Fargo's Motion to Dismiss Pursuant to Rule 12(b)(6) [14]. The plaintiff styles the motion as one seeking relief from a judgment or order under FED. R. CIV. P. 60. An order granting relief under Rule 60 must be based upon: (1) clerical mistakes, (2) mistake, inadvertence, surprise, or excusable neglect, (3) newly discovered evidence, (4) fraud or other misconduct of an adverse party, (5) a void judgment, or (6) any other reason justifying relief from the operation of the order.

In 2012, Plaintiff Fred Smith filed an action relating to the same foreclosure proceedings on the same property at issue here, and asserted a number of claims. *Smith v. Bank of Am., N.A.*, 2012 WL 4320845 (N.D. Miss. Sept. 20, 2012). This court granted summary judgment in favor of Wells Fargo by finding that Smith conceded the central factual issues of the case and asserted a number of utterly frivolous claims. *Id.* However, Smith and his wife then filed another action relating to the same foreclosure proceedings on the same property, which the court dismissed due to the *res judicata* and/or collateral estoppel effect of prior litigation of those claims. *Smith v. Jedynek*, No. 3:14-cv-00059-MPM-JMV (N.D. Miss. Jan. 28, 2015).

The present motion for reconsideration [15] is only the most recent of the plaintiff's many requests seeking relief on this matter. In the most recent petition filed, the plaintiff claims Wells Fargo violated a number of state and federal laws in connection with the foreclosure of his home. Smith asked

the court for declaratory judgment and a temporary restraining order regarding the property and foreclosure proceedings. The court dismissed the complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief could be granted, specifically asserting his claims are barred by the *res judicata* and/or collateral estoppel effect.

Plaintiff seeks reconsideration under the mistaken theory that the order granting the complaint's dismissal [14] is contrary to the record and contrary to Rule 60. In any event, the instant motion [15] is largely a recapitulation of the petitioner's previous requests for post-judgment relief. As such, for the reasons set forth in the court's previous decisions, the court holds that the instant motion [15] should be dismissed for want of substantive merit. Mr. Smith has neither asserted nor proven any of the specific justifications for relief from an order permitted under Rule 60. In addition, the plaintiff has not presented any other reason justifying relief from the operation of the order [14]. As such, it is hereby **ORDERED** that the motion for reconsideration [15] is **DENIED**.

**SO ORDERED**, this, the 22<sup>nd</sup> day of February, 2016.

/s/ MICHAEL P. MILLS  
**UNITED STATES DISTRICT JUDGE**  
**NORTHERN DISTRICT OF MISSISSIPPI**